



Central Midlands Regional Transit Authority
dba
The COMET

Disadvantaged Business Enterprise (DBE)
Program

Revised June 2018

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POLICY STATEMENT

Objectives/Policy Statement (Corresponding to Section 26.1, 26.23 of the DBE Regulations)

The Central Midlands Regional Transit Authority (the "CMRTA") has established a Disadvantaged Business Enterprise ("DBE") program ("Program" or "DBE Program") in accordance with regulations of the U.S. Department of Transportation ("DOT"), 49 CFR Part 26 (the "DBE Regulation or Regulations"). The CMRTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the CMRTA has signed an assurance that it will comply with the DBE Regulations.

It is the policy of the CMRTA to ensure that DBE's as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program meets or exceeds all of the requirements of applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Arlene Prince, Compliance and Civil Rights Officer, has been delegated as the DBE Liaison Officer. In that capacity, Ms. Prince is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the CMRTA in its financial assistance agreements ("Agreements") with the Department of Transportation.

The CMRTA has disseminated this policy statement to the CMRTA Board of Directors and all of the components of our organization. CMRTA will distribute this statement to DBE and non-DBE business communities that perform work on DOT-assisted contracts. This will be done by including this policy statement in all procurement documents (Request for Proposals, Invitation for Bids, etc.). The statement will also be included on the CMRTA website.



John Andon
Executive Director



Date

SUBPART A – GENERAL REQUIREMENTS

Objectives/Policy Statement (corresponding to Section 26.1, 26.23 of the DBE Regulations)

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program meets or exceeds all of the requirements of applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Applicability (corresponding to Section 26.3 of the DBE Regulations)

The CMRTA is the recipient ("Recipient") of federal transit funds authorized by Federal transit laws in Title 49 Code Chapter 53, as amended by HR 4348 the "Moving Ahead for Progress in the 21st Century Act" or "MAP-21."

Definitions (corresponding to Section 26.5 of the DBE Regulations)

The CMRTA will adopt the definitions contained in Section 26.5 of Part 26 for this Program.

For purposes of this DBE Program, the term "Bidders" means any entity responding to a procurement solicitation whether in the form of a request for bids, request for proposals or any other legally available form.

Non-discrimination Requirements (corresponding to Section 26.7 of the DBE Regulations)

The CMRTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, the CMRTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

Record Keeping Requirements (corresponding to Section 26.11 of the DBE Regulations)

Uniform Report of DBE Awards or Commitments and Payments: 26.11 (a)

CMRTA will report DBE participation to the relevant operating administration [FTA] using the Uniform Report of DBE Awards or Commitments and Payments, found in **49 CFR Appendix B to Part 26** of the DBE Regulations.

Bidders List: 26.11(c)

The CMRTA will create a Bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of the Bidders list is to create accurate data to assist in setting overall DBE goals. The Bidder list will include the name, address, DBE/ non-DBE status, age of firms, and annual gross receipts of firms¹ and date of bid of firms.

CMRTA will collect this information in the following ways:

1. A contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts;
2. An CMRTA-directed survey of a statistically sound sample of firms on a name/address list to get age of firm/size information;
3. A notice in all solicitations, and otherwise widely disseminated documents, requesting firms quoting on subcontracts to report information directly to CMRTA.

Assurances (corresponding to Section 26.13 of the DBE Regulations)

The CMRTA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Federal Financial Assistance Agreement Assurance: 26.13(a)

The CMRTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The Recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the CMRTA of its failure to carry out its approved Program, the Department may impose sanction as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

¹ The annual gross receipts of the firm. CMRTA may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.

Contract Assurance: 26.13b

The CMRTA will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

DBE Program Updates (corresponding to Section 26.21 of the DBE Regulations)

Since the CMRTA has received a grant of \$250,000 or more in Federal Transportation Administration ("FTA") planning capital, and/or operating assistance in a federal fiscal year, CMRTA will continue to carry out this Program until all funds from DOT financial assistance have been expended. CMRTA will provide to DOT updates representing any significant changes in the Program.

DBE Liaison Officer (DBELO) (corresponding to Section 26.25 of the DBE Regulations)

CMRTA has designated the following individual as the DBE Liaison Officer ("DBELO"):

Dr. Arlene Prince, Compliance & Civil Rights Officer
3613 Lucius Road, Columbia, SC 29201
Work Telephone: 803-255-7129
Work Fax: 803-255-7113
Email: arlene.prince@catchthecomet.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the CMRTA complies with all applicable provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director concerning DBE Program matters. An organizational chart displaying the DBELO's position in the organization is found in **Attachment A** to this Program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by DOT.
2. Review third party contracts and purchase requisitions for compliance with this Program.
3. Work with all departments to set overall annual goals.
4. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identify contracts and procurements so that DBE goals are included in solicitations (both race-neutral, methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyze the CMRTA's progress toward attainment and identify ways to improve progress.
7. Participate in pre-bid meetings.
8. Advise the Executive Director\governing body on DBE matters and achievement.
9. Act as liaison to the DBE Advisory Committee (as needed).
10. Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plan and participate in DBE training seminars.
12. Act as liaison to the Uniform Certification Process in South Carolina.
13. Provide outreach to DBEs and community organizations to advise them of opportunities.
14. Maintain the CMRTA's updated directory on certified DBEs as published by SCDOT.

DBE Financial Institutions (corresponding to Section 26.27 of the DBE Regulations)

It is the policy of the CMRTA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

The CMRTA, through the Central Midlands Development Corporation (CMDCC), currently utilizes the services of the South Carolina Community Bank. South Carolina Community Bank is a minority-owned banking institution and provides the CMRTA with full service banking functions. This financial institution is located at the address below:

South Carolina Community Bank
1545 Sumter Street
Columbia, South Carolina 29201

A listing of minority-owned banks from the Federal Reserve Bank can be found at:
<http://www.federalreserve.gov/releases/mob/current/default.htm>.

Prompt Payment Mechanisms (corresponding to Section 26.29 of the DBE Regulations)

Prompt Payment: §26.29(a)

CMRTA will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contract receives from CMRTA. The thirty (30) day limit would be the maximum time allowed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of CMRTA. For select contacts, the CMRTA may require payment to be made to subcontractors in as few as seven (7) days from the receipt of each payment the prime contractor receives from the CMRTA. This clause applies to both DBE and non-DBE subcontracts.

Retainage: §26.29(b)

The prime contractor agrees to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. The thirty (30) day limit would be the maximum time allowed. For select contacts, the CMRTA may require the return of retainage payments to each subcontractor in as few as seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of CMRTA. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: §26.29(d)

The CMRTA has established the following monitoring and enforcement mechanisms to ensure compliance with the prompt payment clause(s) of each contract. The CMRTA shall place the following language in all federally funded contracts:

1. Beginning with the second payment request on each contract, the prime contractor will be required to submit a *Prompt Pay Affidavit* as to the specific amounts and dates of each payment (including retainage payments) paid to each subcontractor and that the prompt payment clause(s) of the contract have been fully satisfied as noted in **Attachment B** of this document.

2. The CMRTA will obtain from each subcontractor monthly documentation of the amounts and date of receipt of all payments (including retainage payment) from the prime contractor.
3. The CMRTA will compare the information obtained from the subcontractor with the information provided by the prime contractor and make a determination as to the prime contractor's compliance with the prompt payment clause(s) of the contract.
4. Failure to comply with the prompt payment requirements of the contract will result in liquidated damages being assessed against the prime contractor in an appropriate amount.
5. Each contract shall contain provisions that failure by the prime contractor to comply with the prompt payment clause(s) shall be an event of termination for cause.

CMRTA's DBELO will conduct regular project site visits to monitor and confirm DBEs assigned to perform work on federally-funded projects. CMRTA's DBELO shall have final sign-off to ensure all DBE payments and retainage is in fact occurring.

Directory (corresponding to Section 26.31 of the DBE Regulations)

The South Carolina Department of Transportation ("SCDOT") maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The SCDOT revises the Directory frequently to add newly certified agencies and remove any that no longer meet the certification requirements. The Directory is available on the SCDOT website:

<http://www.scdot.org/business/bus-development-dbe-certification>

Overconcentration (corresponding to Section 26.33 of the DBE Regulations)

The CMRTA has not identified that overconcentration exists in the types of work that DBEs perform.

Business Development Programs (corresponding to Section 26.35 of the DBE Regulations)

CMRTA has not established a business development program. The CMRTA will update this portion of the DBE Program as details become available. CMRTA will re-evaluate the need for such a program every two year.

Monitoring and Enforcement Mechanisms (corresponding to Section 26.37 of the DBE Regulations)

The CMRTA will employ the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26 (DBE Regulations).

1. The CMRTA will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the Program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. The CMRTA will consider similar action under CMRTA's own legal authorities, including responsibility determinations in future contracts. In the events of non-compliance with the DBE regulations by a participant in CMRTA's procurement activities, **Attachment C** provides a list of the regulation, provisions, and contract remedies available to CMRTA.
3. The CMRTA will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by periodic random site visits to the locations where DBEs are performing work. A written certification will be completed by the observer, usually the DBELO, which states that contracting records were reviewed and work sites on which DBEs are performing were monitored. This monitoring will occur for each contract/project on which DBEs are participating.
4. The CMRTA will require that prime contractors submit a *Schedule of Participation* form (**Attachment D**) to the DBELO for utilization auditing and participation levels for each contract/project on which DBE subcontractor are participating on a federally funded project. The *Schedule of Participation* form will show the following:
 - a. the scope of work to be performed;
 - b. the dollar value of the work; and
 - c. the percent of total bid committed to each DBE.
5. The CMRTA will obtain from each prime contractor and DBE monthly documentation of the amounts and dates of receipt of all payments to the DBEs. This information will be reviewed to ensure that actual amount paid to DBE subcontractors equal or exceeds the dollar amounts stated in the schedule of DBE participation.
6. Prime contractors will be required to maintain records and documents of payments to DBEs for up to three years following completion of the contract. These records will be made available for inspection upon request by any authorized representative of CMRTA or DOT. This requirement also extends to any DBE subcontractor.

7. The CMRTA will report DBE participation on a semi-annual basis using the USDOT revised UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS of DBE awards as set forth in **Appendix B of 49 CFR Part 26**.

Fostering Small Business Participation (corresponding to Section 26.39 of the DBE Regulations)

The CMRTA has incorporated the following non-discriminatory element to its DBE Program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses).

1. Removal of unnecessary and unjustified bundling of contract requirements; smaller contract requirements would allow small business participation, including DBEs, in procurements as prime contractors or subcontractors.
2. Requiring Bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation; This identification of projects would allow for small businesses, including DBEs, to easily note procurements where they may participate as subcontractors
3. Requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

As part of this program element, CMRTA will utilize the following strategies (as listed in the DBE Rule Change of January 2011):²

CMRTA will actively implement its program elements to foster small business participation as required to meet good faith implementation of the CMRTA DBE program.

² (b) This element must be submitted to the appropriate DOT operating administration for approval as a part of CMRTA DBE program by February 28, 2012. As part of this program element CMRTA may include, but are not limited to, the following strategies:

- (1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).
- (2) In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- (3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (5) To meet the portion of CMRTA overall goal it projects to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas (corresponding to Section 26.43 of the DBE Regulations)

The CMRTA does not use quotas in any way in the administration of this DBE Program.

Overall Goals (corresponding to Section 26.45 of the DBE Regulations)

The CMRTA will submit its triennial overall DBE goal FTA **on or before August 1** of the year specified by FTA. The overall DBE goal will be established in accordance with the two-step process³ as specified in 49 CFR Part 26.45 for FTA, and FAA-assisted project. CMRTA's overall goal calculation is provided in **Attachment E**.

In the **first step**, the CMRTA will create a baseline figure reflecting the relative availability of "ready, willing and able DBEs" in our marketplace; the **second step** is to examine all relevant evidence, including past DBE participation, to determine what adjustments, if any, are needed to arrive at an overall goal.

CMRTA may also request use of project-specific DBE goals as appropriate, and/or may establish project- specific DBE goals as directed by FTA or the CMRTA Board of Directors.

The process generally used by the CMRTA to establish overall DBE goals is as follows:

1. The method used to calculate the relative availability of DBE's ("base figure") for "Step 1" of the process is as follows:
 - (a) The **base figure** is a percentage figure calculated by dividing a number representing available DBE's by a number representing all available firms. This is done using NAICS codes in the surrounding counties as compared to the DBE's certified by SCDOT.
2. The data sources used in implementing "Step 2" are as follows:
 - (a) CMRTA staff may adjust the "base figure" from Step 1 to reflect as accurately as possible the DBE participation the CMRTA would expect in absence of discrimination. For example, if the CMRTA's historically surpassed its DBE goal, the Step 1 base figure may be inflated to account for the historical average.

Prior to establishing the final overall goals each year, the CMRTA will hold a public meeting to receive input from vendors (including DBEs) about the proposed DBE goal. Notice of the meeting will be posted on the CMRTA website. Comments received from this meeting will be presented to the CMRTA Board of Directors for consideration prior to establishment of the final goal.

The CMRTA will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business

³ The two-step process is in accord with the USDOT Tips for Goal Setting (USDOT Tips), which is approved by the General Counsel of the USDOT.

hours at the principal office for thirty (30) days following the date of the notice, and informing the public that comments on the goals will be accepted for thirty (30) days from the date of the notice. Normally, this notice will be issued by **June 1 each year**. The notice will include addresses to which comments may be sent as well as where the proposal may be reviewed.

The CMRTA's overall goal submission to DOT will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during the public participation process and CMRTA's responses; and proof of publication of the goal in media outlets.

The CMRTA will begin using its overall goal on **October 1** of the specified year, unless the CMRTA has received other instructions from USDOT. If the CMRTA establishes a goal on a project basis, the CMRTA will begin using its goal by the time of the first solicitation for a USDOT-assisted contract for the project. CMRTA's goal will remain effective for the duration of the three-year period established and approved by FTA.

Goal Setting and Accountability (corresponding to Section 26.47 of the DBE Regulations)

If the awards and commitments shown on CMRTA's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable goal for that fiscal year, CMRTA will⁴:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis, and to enable CMRTA to meet fully goal for the new fiscal year;
3. Within ninety (90) days of the end of the affected fiscal year, retain analysis and corrective actions in file for three years and make available to FTA upon request.⁵

⁴ In order to be regarded by the Department as implementing CMRTA DBE program in good faith.

⁵ CMRTA must retain analysis and corrective actions in its records for three years and make it available to FTA or FAA on request for their review.

(4) FTA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to its overall goal methodology, changes in its race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) CMRTA may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in § 26.103 or § 26.105 of this part and other applicable regulations, for failing to implement its DBE program in good faith if any of the following things occur:

(i) CMRTA does not submit CMRTA analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves CMRTA analysis or corrective actions; or

(iii) CMRTA does not fully implement the corrective actions to which it has committed or conditions that FHWA, FTA, or FAA has imposed following review of CMRTA analysis and corrective actions.

(d) If, as recipient, CMRTA's Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that CMRTA will achieve DBE awards and commitments that would be necessary to allow CMRTA to meet CMRTA's overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require CMRTA to make further good faith efforts, such as by modifying CMRTA race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Transit Vehicle Manufacturers Goals (corresponding to Section 26.49 of the DBE Regulations)

The CMRTA will require each transit vehicle manufacturer ("TVM"), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the CMRTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the Program.

Meeting Overall Goals/Contract Goals (corresponding to Section 26.51 of the DBE Regulations)

The CMRTA will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, CMRTA will:

- Ensure distribution of the DBE directory through print and electronic means, to the widest feasible universe of potential prime contractors; and
- Carry out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on Recipient mailing lists for Bidders; ensuring the dissemination to Bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate); and
- Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.
- The CMRTA will use contract goals to meet any portion of the overall goal CMRTA does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.
- The CMRTA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The CMRTA need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

Means CMRTA uses to meet overall goals (corresponding to Section 26.51 1(c), (d), (e), (f) and (g) of the DBE Regulations)

The CMRTA will express its contract goals as a percentage of the total amount of the contract.⁶

- c) Each time CMRTA submit its overall goal for review by the concerned operating administration, CMRTA must also submit its projection of the portion of the goal that CMRTA expect to meet through race-neutral means and its basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of its overall goal.
- d) CMRTA must establish contract goals to meet any portion of its overall goal CMRTA do not project being able to meet using race-neutral means.
- e) The following provisions apply to the use of contract goals:
 - 1) CMRTA may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.
 - 2) CMRTA are not required to set a contract goal on every DOT-assisted contract. CMRTA are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by its overall goal, CMRTA must set contract goals so that they will cumulatively result in meeting any portion of its overall goal it does not project being able to meet through the use of race-neutral means.
 - 3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal CMRTA establish.
 - 4) CMRTA's contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.
- f) To ensure that CMRTA DBE program continues to be narrowly tailored to overcome the effects of discrimination, CMRTA must adjust its use of contract goals as follows:
 - 1) If CMRTA approved projection under paragraph (c) of this section estimates that CMRTA can meet its entire overall goal for a given year through race-neutral means, CMRTA must implement its program without setting contract goals during that year, unless it becomes necessary in order to meet its overall goal.
 - 2) If, during the course of any year in which CMRTA is using contract goals, CMRTA

⁶ Overall goal for review by the concerned operating administration.

determines that it will exceed its overall goal, CMRTA will reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If CMRTA determine that CMRTA will fall short of its overall goal, then CMRTA must make appropriate modifications in its use of race-neutral and/or race-conscious measures to allow CMRTA to meet the overall goal.

- 3) If the DBE participation CMRTA has obtained by race-neutral means alone meets or exceeds its overall goals for two consecutive years, CMRTA is not required to make a projection of the amount of its goal CMRTA can meet using such means in the next year. CMRTA does not set contract goals on any contracts in the next year. CMRTA continue using only race-neutral means to meet its overall goals unless and until CMRTA does not meet its overall goal for a year.
- 4) If CMRTA obtain DBE participation that exceeds CMRTA overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), CMRTA must reduce its use of contract goals proportionately in the following year.
- g) In any year in which CMRTA projects meeting part of its goal through race-neutral means and the remainder through contract goals, CMRTA must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. CMRTA must report this data to the concerned operating administration as provided in § 26.11.

Good Faith Efforts Procedures (corresponding to Section 26.53 of the DBE Regulations)

Award of Contracts with a DBE Contract Goal: 26.53(a)

In those instances where a contract-specific DBE goal is included in a solicitation, the CMRTA will not award the contract to a Bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the Bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of Good Faith Efforts: 26.53(a) & (c)

The CMRTA DBELO with assistance from the CMRTA legal counsel, will determine whether a Bidder who has not met the contract goal has documented adequate good faith efforts to be regarded as responsive and/or responsible. Professional assistance may be obtained from a consultant with expertise in matters relating to the DBE Regulations.

The process used to determine whether good faith efforts have been made by a Bidder are as follows:

1. The CMRTA will review information provided by a Bidder to determine its good faith efforts, including any of the following actions:
 - (a) Whether the DBE, sub consultant, subcontractor, or supplier attended any pre-proposal meetings that were scheduled by the Bidder's project team.
 - (b) Advertising in local general media circulation, trade associations, and minority focused media in the CMRTA's Transit Zone concerning the subcontracting opportunities.
 - (c) Providing timely and written notice, email or letter, to a reasonable number of specific DBE's that subcontracting opportunities are available. Notice should include but not be limited to the utmost level of participation possible, plans and specifications (if applicable), names of specific opportunities and descriptions of the work/service, and anticipated time schedule for portions of the work to be performed.
 - (d) Following up initial solicitations of interest by contacting DBEs to determine with certainty whether the firms are interested. Detailing the efforts with the names, addresses, dates contacted, and telephone numbers of certified SCDOT DBEs; their contact information and results of follow-up (i.e., accepted DBE services, denied DBE services, reasons for denial, etc.).
 - (e) Whether the Bidder selected portions of work to be performed by DBE's in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation).
 - (f) Providing interested DBE's with adequate information about the scope of work, specifications and requirements of the contract.
 - (g) Negotiating in good faith with interested DBE's, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
 - (h) Making an effort, where feasible, to assist interested DBEs in obtaining information and/or access to bonding, lines of credit, or insurance as required by the CMRTA.
 - (i) Whether the Bidder effectively used the services of available minority community organizations; minority contractors' groups; local, state, and federal minority business assistance offices, the SCDOT DBE office; and other organizations that provide assistance in the recruitment and placement of DBEs.

NOTE: The items set forth above are merely suggested actions that can assist in meeting a "Good Faith Effort." A Bidder may also submit other information in the "Good Faith Effort" documentation of actions taken to meet the DBE goal stated. See **Attachment F** for schedule of DBE participation.

2. The CMRTA will ensure that all information is complete and accurate and adequately documents the Bidder's good faith efforts before the CMRTA commits to the performance of the contract by the Bidder.
3. The CMRTA will perform necessary due diligence in its evaluation of the documentation of good faith efforts provided by a Bidder. The expectation

is that the efforts employed by the Bidder would be those that one could reasonably expect to be taken if the Bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts will not be sufficient to meet the good faith effort standard.

4. After considering the quality, quantity and intensity of the different kinds of efforts that the Bidder has made, the CMRTA will make a fair and reasonable judgment as to whether any Bidder that did not meet the contract goal made adequate good faith efforts.

Information to be Submitted: 26.53(b)

The CMRTA treats Bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness and/or responsibility.

Each solicitation for which a contract goal has been established will require the Bidders to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.⁷

Administrative Reconsideration: 26.53(d)

Within five (5)⁸ days of being informed by the CMRTA that it is not responsive or responsible because it has not met the contract goal and has not documented sufficient good faith efforts, a Bidder may request administrative reconsideration. This request must be made in writing to the CMRTA's Executive Director, who did not

⁷ See Appendix A, 49 CFR Part 26 of this part. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

(3)(i) At CMRTA discretion, the bidder/offeree must present the information required by paragraph (b)(2) of this section -

- (A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or
- (B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.

(ii) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeree may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

⁸ As of January 1, 2017, new law.

participate in the original determination that the Bidder did not document that it met the DBE goal or made adequate good faith efforts to meet the goal.

The current Executive Director/Reconsideration Official is:

John Andoh, Executive Director/CEO
The COMET
3613 Lucius Road, Columbia, SC 29201
803-255-7132
john.andoh@catchthecomet.org

As part of this reconsideration, the Bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the DBE goal or made adequate good faith efforts to do so. The Bidder will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the DBE goal or made adequate good faith efforts to do so. CMRTA decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

The CMRTA will send the Bidder a written decision on reconsideration, explaining the basis for finding that the Bidder did or did not meet the DBE goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the DOT.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract DBE Goals: 26.53(f)

The CMRTA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without CMRTA's prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non- DBE firm, or with another DBE firm. The CMRTA will only provide written consent when it determines there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE Regulations.

For purposes of this section, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements,
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. The CMRTA has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to the CMRTA written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. As determined by the CMRTA, other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the CMRTA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so and the reason for the request. A copy of this notice must be provided to the CMRTA prior to consideration of the request to terminate. The DBE will then have **five (5) days** to respond and advise CMRTA of why it objects to the proposed termination.

If substitution of a DBE is approved by the CMRTA, the Bidder must replace one DBE with another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the contract. The substitute DBE must be certified by the SCDOT. The name, address, certification letter and principal office of the proposed DBE must be submitted with the request for substitution or information from SCDOT's current SCUCP Directory.

In the event that Bidder is unable to contract with another DBE, good faith effort documentation must be provided to the CMRTA describing the prime contractor's attempts to locate a substitute DBE. In all situations, the Bidder may not terminate or substitute a DBE subcontractor without the prior written consent of the CMRTA.

The Bidder must submit a new form for the substitute DBE(s) subcontractor(s) with the request for change. The CMRTA will notify the Bidder in writing of the decision as expeditiously as possible. If the contract has been awarded and the CMRTA approves the proposed substitution in writing, the Bidder shall provide a copy of the executed subcontract agreement with the proposed DBE subcontractor to the CMRTA within ten (10) business days of its receipt of the substitution approval.

If the Bidder does not comply with these provisions, the CMRTA will apply contract remedies as defined in the DBE Regulations, or other contract remedies, as appropriate. For example, the CMRTA may (a) issue an order stopping all or part of payment or work until satisfactory action has been taken; (b) issue an order terminating the contract for cause; (c) assess liquidated damages in the amount of

the profits from the terminated portion of the DBE subcontract or (d) remedies provided for in the effected contract.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the [Name of Recipient] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE.

A DBE contract goal of ___ percent has been established for this contract. The bidder/offers shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offers will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offers's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Counting DBE Participation (corresponding to Section 26.55 of the DBE Regulations)

The CMRTA will count DBE participation toward overall and contract goals as provided in the 49 CFR 26.55 DBE Regulations. The CMRTA will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

SUBPARTS D & E – CERTIFICATION

Unified Certification Programs (corresponding to Section 26.81 of the DBE Regulations)

In March of 1999, the Disadvantaged Business Enterprise (DBE) Program Regulations (49 CFR Parts 26 & 23) took effect and required that all recipients of funds from the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) develop a Unified Certification Program (UCP) in each state.

The UCP is a "One-Stop Shopping" certification program that eliminates the need for firms to obtain DBE certification from multiple agencies in the State. Certified firms under the new UCP will be recognized by recipients of FAA, FHWA and FTA funds in the

State of South Carolina. The South Carolina Department of Transportation is the lead agency for the UCP and will be handling all certification requests and related issues. Currently, there are 27 participating UCP Partners located around the State of South Carolina.

The CMRTA is the member of a Unified Certification Program ("UCP") administered by the SCDOT (**Attachment G**). The UCP will meet all of the requirements of this section. The CMRTA will use and count for DBE credit only those DBEs certified by the SCDOT UCP. For information about the certification process or to apply for certification, firms should contact:

Division of Minority and Small Business Affairs
South Carolina Department of Transportation
955 Park Street, STE 117
Columbia, South Carolina 29201
(803) 737-1372 - Phone
(803) 737-2021 – Fax
Website: www.scdot.org/business/bus-development-dbe-certification

Procedures for Certification Decisions (corresponding to Section 26.83-26.91 of the DBE Regulations)

SCDOT will follow the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of SCDOT's certification procedures and/or UCP program are available at http://www.scdot.org/doing/businessdevelop_scunified.aspx.

Any firm or complainant may appeal a SC UCP's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave, SE
West Building, 7th Floor
Washington, D.C. 20590

SCDOT is required promptly to implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Information, Confidentiality, Cooperation (corresponding to Section 26.109 of the DBE Regulations)

The CMRTA will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with federal, state, and local laws.

Any solicitation issued by the CMRTA will contain a provision substantially identical to the following:

All proposals received become the exclusive property of the CMRTA. Any contract entered into by the CMRTA and Bidder will become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which constitute confidential and proprietary information or trade secrets as those terms are used in S.C. Code Ann. §§ 11-34-410 and 30-4-40(a)(1) and which are so marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY."

All contracts executed by the CMRTA will contain provisions substantially identical to the following:

Upon written request from the CMRTA, the contractor shall provide the CMRTA any and all documents, data, and financial records, in written or electronic form, relating to the expenditure of all funds, regardless of the source of funding, paid to the contractor under the contract. Such information shall be provided **within five (5) days, unless otherwise agreed upon in writing by the Executive Director or his designee, of its request at no cost to the CMRTA.** Such information shall be available for public disclosure by the CMRTA as provided for in the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, et seq. (2013) and S.C. Code Ann. § 11-35-410 (2017).

The contractor agrees to and shall insure that this financial transparency provision is included in each contract that it has with a subcontractor to perform work under any contract.

To the extent that the South Carolina Freedom of Information Act (SCFOIA) and S.C. Code Ann. § 11-35-410 require the production and release of public records, the CMRTA has a statutory duty to comply with SCFOIA and is subject to civil suit, including the award of costs and attorney's fees for failure to comply therewith. The contractor acknowledges that the CMRTA, in its sole discretion, must determine what is a public record and what the CMRTA is required to release. In the event there is a dispute regarding what constitutes a public record and whether it is exempt from disclosure pursuant to S.C. Code Ann. § 30-4-40 or § 11-35-410, the CMRTA will give the contractor **five (5) days' notice prior** to releasing such information, during which time the

contractor shall take whatever action it deems necessary to challenge the release. Further, if any legal actions are brought against the CMRTA as a result of the contractor's refusal to provide or failure to cooperate with the CMRTA's request for information, the contractor shall reimburse to the CMRTA all costs and attorneys' fees incurred by the CMRTA in connection with such an action and shall in all respects indemnify and hold the CMRTA harmless against any losses or financial penalties in connection with such action.

The contractor agrees to and shall insure that this provision is included in each contract that it has with a subcontractor to perform work under a contract.

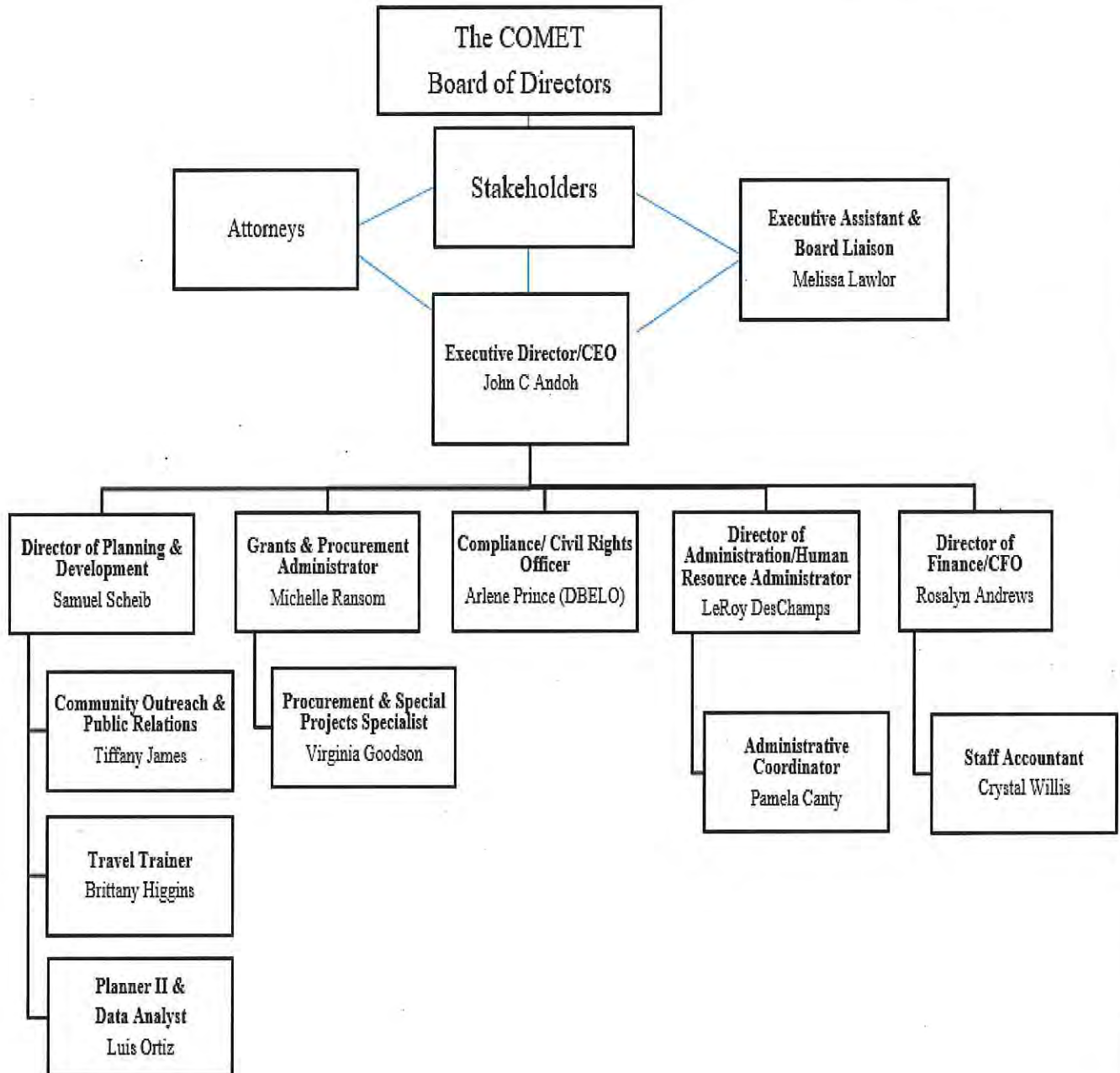
Notwithstanding any contrary provisions of state or local law, CMRTA will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter. This includes applications for DBE certification and sourcing information. However, CMRTA must transmit this information to DOT, or to any other state applied to under §28.52, in any certification appeal proceeding under §26.89.

Monitoring Payments to DBEs

The CMRTA will monitor payments to DBE's monthly. The CMRTA will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the CMRTA, FTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The CMRTA will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation in the contract being audited.

Attachment A Organizational Chart



Attachment B
Prompt Payment Affidavit



PROMPT PAYMENT AFFIDAVIT

Re: Payment Request No. _____ *(use Final Monthly Payment)*

Payment Period Date: From: _____ **To:** _____
(Should be from the first through the last day of the prior month)

I, _____, the General Manager, of Transdev Services, Inc. ("Transdev"), do state the following with regard to payments made under CMRTA Fixed Route and Paratransit Program Management Agreement ("Contract"):

Contractor will place a check in the appropriate box below that applies to this payment request.

1. _____ Subcontractors, at the first tier, both DBE and non-DBE, who completed work and were listed for payment on the prior Payment Request No. _____, were paid no later than Thirty (30) business days from the receipt of payment to Transdev that was received from CMRTA.
2. _____ Copies of invoices and cancelled checks for subcontractors at the first tier who were paid under the prior payment request have been delivered or mailed to the DBE Department. In addition, Company has attached to the current Payment Request all lien waivers for prior subcontractor payments and any other documentation required by CMRTA. (Failure to attach all required documentation to the Payment Request or forward cancelled checks and invoices to the CMRTA DBE Department may cause the Payment Request to be rejected by CMRTA.)
3. _____ All retainage amounts withheld from any subcontractor who satisfactorily completed its portion of the contract work, including punch list items, were paid to the subcontractor(s) no later than fourteen (14) business days after it satisfactorily completed its work, whether or not CMRTA has paid said retainage amounts to Transdev.
(Attach a copy of the cancelled check evidencing payment of each retainage amount.)
4. _____ There was no delay in or postponement of any payment owed to a subcontractor, whether periodic payment or retainage amount, except for good cause and after receipt of prior written approval from the CMRTA Purchasing Agent.
(Attach a copy of the written approval from the CMRTA Purchasing Agent.)

TRANSDEV SERVICES, INC.

Signature

Print Name

Date:

Subscribed and sworn to before me this _____ day of _____ 20_____.

Notary Public for _____ South Carolina

My Commission expires: _____.

Please mail original, completed and signed form to: Central Midlands Transit/The COMET, 3613 Lucius Road, Columbia, SC 29201

Email to: Accounting@catchthecomet.org

Attachment C
Monitoring and Enforcement Mechanisms/Legal Remedies

The CMRTA has available several remedies to enforce the DBE requirements contained in its contracts including but not limited to the following:

1. Termination of contract and imposition of liquidated damages;
2. Breach of Contract action pursuant to South Carolina law; and
3. Deeming vendor non-responsive in future procurements pursuant to CMRTA Procurement Policy, Article 4, Part A, Section 3, and South Carolina Code of Regulations 19-445.2125A.

In addition, the Federal Government has available several enforcement regulations part, including but not limited to:

1. Referral to Department of Justice for Criminal Prosecution under 18 U.S.C. 1001 or other applicable provisions of law;
2. Action under Suspension or Debarment Proceedings pursuant to 49 C.F.R. Part 26.107; and
3. Enforcement Action under Program Fraud and Civil Remedies pursuant to 49 C.F.R. Part 31.

Attachment D Monthly Schedule of Participation and Payment



**Disadvantage Business Enterprise (DBE)
Monthly Schedule of Participation and
Payment** *(To be submitted monthly with request for
payment from the CMRTA.)*

The Code of Federal Regulations 49, 26.37(b), requires the Central Midlands Regional Transit Authority (CMRTA) to monitor and verify that work subcontracted to Disadvantaged Business Enterprise (DBE) firms is actually performed by the DBEs. Additionally, the CMRTA is required to report the DBE participation on each project. Therefore, it is the CMRTA's responsibility to discern whether payments are made to DBE firms.

The following information is to be completed and signed by the prime contractor. This document seeks to verify actual payments made to DBE firms. Each DBE firm will be requested by CMRTA to verify the actual payment amount.

Contractor Name: Transdev Services, Inc.

Invoice Amount: _____ **Payment Request No.:** _____

Payment Period: From _____ To _____

Complete the chart below for All DBE subcontractors used on the Project/Contract regardless of dollar amount. Report payments that have already been made to subcontractors.

FINAL MONTHLY PAYMENT ☐ (TRANSDDEV INVOICE-16th to last day of the month, due on 5th of following month)

Section 1: Payments to DBE SUBCONTRACTORS				
SUBCONTRACTOR NAME	Description of Work Performed	NAICS Code	Invoice Number(s)	Payment Amount this Period

The undersigned Company certifies the preceding chart is a true and accurate statement of all payments that have been made to subcontractors and suppliers on this Project/Contract. If no subcontractors or suppliers are listed on the preceding chart, the Company certifies that no subcontractors or suppliers were used in performing the Project/Contract for the payment period indicated.

This _____ day of _____ 20____

Signature

General Manager, Transdev Services, Inc. (Print Name)

Please mail original, completed and signed form to: Central Midlands Regional Transit Authority/The
COMET, 3613 Lucius Road, Columbia, SC 29201
Email to: Accounting@catchthecomet.org

1 of 1

The CMRTA Form ____
v.082417

Attachment E
Overall DBE Goal Methodology

CENTRAL MIDLANDS REGIONAL TRANSIT AUTHORITY
METHODOLOGY FOR DETERMINING DBE GOAL (49 CFR § 26.45)
Federal Fiscal Years 2017, 2018, and 2019

OVERALL GOAL

The Central Midlands Regional Transit Authority (CMRTA) dba The COMET has prepared this document to outline the methodology used to establish its overall three-year Disadvantaged Business Enterprise (DBE) goal for FTA assisted contracts. The overall goal for federal fiscal years 2017-2019 has been set at **5%** utilizing the methodologies described in 49 CFR §26.45. CMRTA anticipates that at least **2.5%** of the goal will be met through race-conscious measures and the remaining **2.5%** will be achieved through race-neutral means.

METHODOLOGY

In setting the overall DBE goal for CMRTA, it is required that a two-step process be utilized in establishing the goal. The goal setting process began with a base figure to determine the relative availability of DBEs. The overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on FTA assisted contracts. Data was collected from the most recent South Carolina Unified Certification Directory and the County Business Patterns Census database.

STEP 1: Determining the Base Figure - 49 CFR § 26.45(c)

Step One of the goal setting process is an attempt to come up with a measurement of the actual relative availability of DBEs in the market area. CMRTA's market area consists of counties within South Carolina.

The ratio utilized in Step One is expressed below:

$$\frac{\text{DBEs}}{\text{Non-DBE's and DBEs}}$$

The CMRTA reviewed the methods listed in 49 CFR Part 26.45 (c) and selected the South Carolina Unified Certification Directory as the numerator and the Census Bureau database from the 2015 County Business Patterns data as the denominator in determining the best approach for the base figure. See Table 1.

Table 1-Relative Availability of DBEs by Categories of Work

NAICS Code	Description of Projected Work	Number of DBEs*	Number of ALL Firms ** (including DBEs)	RELATIVE AVAILABILITY (# of DBEs divided by # of all firms)
443142	Hardware/Software (2017)	5	463	0.011
561621	Surveillance/Security System (2017)	4	108	0.037
45321	Office Supplies (2017)	3	98	0.031
323111	Printing Services (2017)	3	216	0.014
423990	Bus Stop Signage (2018)	9	121	0.074
488490	Automated Passenger Counters (2018)	2	41	0.049
236220	Bus Shelters (2018)	63	499	0.126
811192	Bus Wash (2018)	5	221	0.023
423430	Computer Purchase (2018)	5	84	0.060
238210	Hot Spot/Fiber Optics Cabling (2018)	41	906	0.045
TOTAL		140	2757	0.051
*SCUCP Directory				
**US Census Economic Data by NAICS for South Carolina (2015 County Business Patterns)				

Each upcoming federal project was identified and assigned a North American Industry Classification System (NAICS) code in **Table 1**. After compiling all data in the chart above, the base figure percentage was determined by dividing the number of ready, willing and able DBE firms that corresponded to the NAICS codes and work category codes by the number of all firms (DBEs and non-DBEs) ready, willing, and able to bid for the types of work CMRTA will have available using FTA assisted funds during the triennial period. The ratio is expressed below:

$$\frac{140 \text{ (Certified) DBEs}}{2757 \text{ (Total Market Area Firms)}}$$

In this case, using the relative availability of DBEs (140) vs. the relative availability of DBEs and non-DBE firms (2757) for the types of contracts CMRTA anticipate awarding. $(140/2757) = 5.1$ percent.

Based on the calculation above, CMRTA has determined its **Base Figure** (relative availability of DBEs) to be **5% (rounded)**.

Step 2: Adjusting the Base Figure

Upon establishing the Base Figure, CMRTA considered whether a “step two” adjustment was needed to adjust the base figure. CMRTA reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within the market area, in accordance with prescribed narrow tailoring provisions set forth under 49 CFR Part 26 in an effort to derive at a more precise base figure.

Evidence considered in making an adjustment to the Base Figure included Past DBE Goal Attainments to determine capacity, current opportunities relevant to upcoming projects, disparity studies, goal of another recipient, and other evidence which could have an impact on the data analysis

A. Past DBE Goal Attainments

As historical DBE participation attainments provide demonstrable evidence of DBE availability and capacity to perform, CMRTA proceeded to consider past DBE participation attainments for the past three (3) federal fiscal years. After a review of the **Uniform Report of DBE Commitments/Awards and Payments**, it was revealed that several reports had not been prepared and submitted prior to 2016, therefore, using historical data was not available and could not be an option for consideration in adjusting the Base Figure.

B. Current Opportunities

The CMRTA reviewed all upcoming grants with contracting opportunities during the triennial period. Consideration was placed on the availability of DBEs who would be available to perform in several areas. Approximately \$185,000 was available in federal fiscal year 2017 and approximately \$1,234,000 was identified for DBE contracting opportunities in 2018. Since CMRTA does not anticipate an increase in federal funding during 2019, the last year of the triennial year, the agency believes that there will not be a need to make an adjustment in this area.

The breakout of federal dollars available for contracting opportunities is outlined in Table 2. Data is currently not available for FFY2019.

Table 2-Anticipated Contracting Opportunities (2017/2018)

	NAICS	Project Name/Description	Federal Cost	% Total Amount
FFY2017	443142	Hardware/Software	\$65,000	35.1%
	561621	Surveillance/Security System	\$100,000	54.1%
	45321	Office Supplies	\$10,000	5.4%
	323111	Printing Services	\$10,000	5.4%
			\$185,000	100%
FFY2018	423990	Bus Stop Signage	\$80,000	6.5%
	488490	Automated Passenger Counters	\$398,000	32.3%
	236220	Bus Shelters	\$640,000	51.9%
	811192	Bus Wash	\$36,000	2.9%
	423430	Computer Purchase	\$20,000	1.6%
	238210	Hot Spot & Fiber Optics Cabling	\$60,000	4.9%
			\$1,234,000	100%

C. Disparity Study

CMRTA is not aware of any current disparity studies within their jurisdiction and/or market area that are similar in size and nature to consider in this step of the goal setting analysis.

D. Goal of Another Recipient

CMRTA is not aware of another recipient that would be of similar size to consider in this step of the goal setting analysis.

E. Other Available Evidence

CMRTA took into consideration other potential evidence such as financing, bonding and insurance requirements. Based on the contracting opportunities available during the triennial period, CMRTA did not believe any of these items would have an impact on the DBE goal assessment.

PROPOSED OVERALL DBE GOAL

The Final Proposed Overall DBE Goal for FFY 2017-2019 for CMRTA' FTA-assisted contracts will be 5%. As a part of the prescribed goal-setting methodology, CMRTA must project the percentage of its Proposed Overall DBE Goal that can be met utilizing race-neutral and race-conscious measures.

Race-Conscious & Race-Neutral Projection

CMRTA intends to use a combination of race-conscious and race-neutral methods to meet the overall DBE goal of 5% for FFY 2017-2019. Race-neutral approaches will be considered in accordance with the guidelines found at Title 49 CFR § 26.51.

Based on the analysis in Step 1 and Step 2, CMRTA proposes to establish its FFY2017-2019 overall DBE transit goal as follows:

DBE Base Figure 5%
Race-Conscious Component 2.5%
Race-Neutral Component 2.5%

PUBLIC PARTICIPATION AND FACILITATION

In accordance with Section 26.45(g) (1), the CMRTA conducted a public consultation process to obtain feedback from interested stakeholders.

CMRTA scheduled, publicized, and convened a meeting at 3613 Lucius Road in Columbia, South Carolina on March 29, 2018, from 5:30 pm-7:00 pm. This meeting was conducted to obtain information relevant to the goal setting process through direct, interactive exchange. The meeting was publicized to reach as many interested stakeholders within the Central Midlands Region's contracting community. Information about the meeting was shared with several organizations and DBE firms. A list of organizations included but was not limited to the following:

1. African American Chamber of Commerce
2. Alianza Latina
3. Allen University
4. Benedict College
5. Black Pages
6. City of Columbia (Office of Business Opportunity)
7. Columbia Chamber of Commerce
8. DESA
9. IMARA
10. NAACP
11. Richland County
12. Richland Penny
13. SC Black Caucus
14. SC Commission for Minority Affairs
15. South Carolina Department of Transportation
16. South Carolina Chamber of Commerce
17. South Carolina Division of Small and Minority Business Contracting and Certification

- 18. South Carolina Urban League
- 19. Media Outlets
- 20. DBE Firms in Work Categories of Upcoming Contracting Opportunities

During the meeting, CMRTA's made every effort to address questions about the agency's DBE goal methodology as well as other issues that arise under the DBE program. Based on feedback obtained from participants, a request was made to obtain follow-up documents that are relevant to upcoming contracting opportunities.

CMRTA issued a Public Notice on Central Midlands Regional Transit Authority' website. See Figure 1 announcing the Proposed FTA Overall DBE Goal for FFY 2017-2019. The notice informed the public that the proposed goal and rationale were available for inspection at Central Midlands Regional Transit Authority's principal office during normal business hours for 30 days following the date of the Public Notice, and that CMRTA would accept comments on the goal analysis for 30 days from the date of the Public Notice. Contact information for submitting comments was included in the Notice.

A list of individuals who attended the DBE Public Participation Meeting are reflected in Figure 2.

Figure 1-Published Notice
CENTRAL MIDLANDS REGIONAL TRANSIT AUTHORITY
dba THE COMET
NOTICE OF "PROPOSED" FFY2017-19 DBE GOAL

In accordance with 49 CFR §26, the Central Midlands Regional Transit Authority dba The COMET has established a proposed overall goal for participation of Disadvantaged Business Enterprises (DBEs) on Federal Transit Administration funded projects for Federal Fiscal Years (FFY) 2017 -2019.

The Proposed Overall DBE Goal is **5%** with a 2.5% projected to be met through "race-neutral" measures, and 2.5% projected to be met through "race-conscious" measures.

The goal statement and methodology will be available for inspection during business hours, 8:30 a.m. – 4:00 p.m., at The COMET, 3613 Lucius Street, Columbia, South Carolina. This information will also be available at <http://www.CatchTheCOMET.org>.

The COMET will accept written comments for a period of thirty (30) days from today, April 26, 2018. The comment period will end on May 25, 2018. Written comments must be submitted to Arlene Prince, Compliance and Civil Rights Officer, The Comet, 3613 Lucius Street, Columbia, South Carolina 29201 or via email at arlene.prince@catchthecomet.org.

A screenshot of the proposed DBE goal on the agency's website is reflected below:

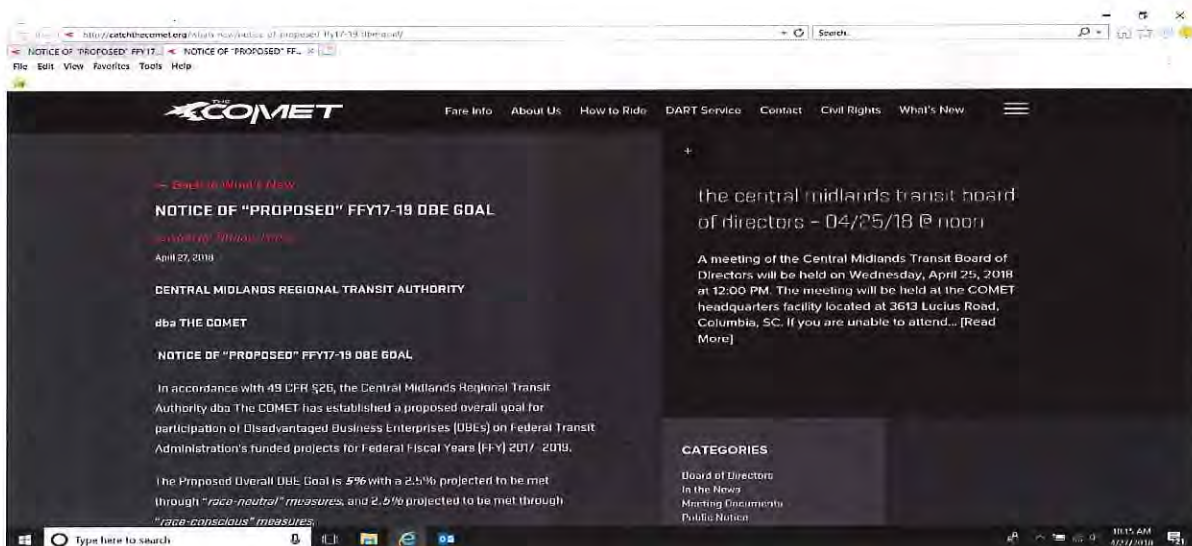


Figure 2-D
BE Public Participation Sign-In Sheet

The COMET
DBE Public Participation Meeting
Thursday, March 29, 2018, 5:30 pm

Name	Agency	Address	City, State, Zip	E-mail Address
Davis, Greg	SCDOT	955 Park Street	Columbia, SC 29201	greg.davis@scdot.org
Doyle, Bill	Information Solutions Group	1670 Springdale Drive, Unit 9, PMB 122	Camden, SC 29220	bill@infois.com
Graham, Rosalyn	Minority Business Development Agency (MBDA)	400 Percival Road	Columbia, SC 29206	rosalyn@mbda.gov
Hemphill, Evangelina	Hemphill Engineering Group	PO Box 291844	Columbia, SC 29229	ehemphill@hmg.com
Lewis-Ellis, Lashita	LLE Construction Group, LLC	2601 Read Street, Suite 1-1	Columbia, SC 29204	lashita@llecgroup.com
Linder, Melissa	City of Columbia, Office of Business Opportunities	1225 Lady Street	Columbia, SC 29201	melissa.linder@colga.gov
Morris, Claire	CLC Claire Morris Agency	2519 Devine Street	Columbia, SC 29205	claire@clcmorris.com
Olds, Connie	Sassy Home Decor LLC	9005 Two Notch Road	Columbia, SC 29202	connie@sassyhomedecor.com
Rushing, Dianne	AOS	1224 Two Notch Road	Lexington, SC 29073	dianne@aos.com
Wade, Erica	City of Columbia, Office of Business Opportunities	1225 Lady Street	Columbia, SC 29201	erica.wade@colga.gov
Johnson, Kyrsha	—	177 Preston Green Drive	Columbia, SC 29221	kjohnson104@gmail.com
Wade, Robert				
Morris, Ric				
Alston, Joyce		P.O. Box 11224	Columbia, SC 29211	joyce.alston@colga.gov
Lewis, David		2799 New North Rd # 66	Columbia, SC 29224	dale@newnorthsc.com
Lambert, David	Alpha Business Essentials			lambert@alpha-business.com

**The COMET
DBE Public Participation Meeting
Thursday, March 29, 2018, 5:30 pm**

[illegible]

Attachment F

Schedule of DBE Participation-Bidder's GFE Document

Disadvantaged Business Enterprise

*To be filled out by Prime Consultant (Multiple Copies Can Be Made)

(1) Name of DBE	<input checked="" type="checkbox"/> MBE (Minority) <input checked="" type="checkbox"/> WBE (Woman)
Address:	<input checked="" type="checkbox"/> Year Firm Established
Owner/Contact Name(s):	Email Address:
Phone No.:	<input checked="" type="checkbox"/> US Citizen <input checked="" type="checkbox"/> Non-US Citizen
Scope of Work to be Performed:	<input checked="" type="checkbox"/> Supplier <input checked="" type="checkbox"/> Manufacturer
Dollar Value of Work:\$	% of total bid amount %
(2) Name of DBE	<input checked="" type="checkbox"/> MBE (Minority) <input checked="" type="checkbox"/> WBE (Woman)
Address:	<input checked="" type="checkbox"/> Year Firm Established
Owner/Contact Name(s):	Email Address:
Phone No.:	<input checked="" type="checkbox"/> US Citizen <input checked="" type="checkbox"/> Non-US Citizen
Work/Service to be performed:	<input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer
Dollar Value of Work:\$	% of total bid amount %
(3) Name of DBE	<input type="checkbox"/> MBE(Minority) <input type="checkbox"/> WBE (Woman)
Address:	<input type="checkbox"/> Year Firm Established
Owner/Contact Name(s):	Email Address:
Phone No.:	<input checked="" type="checkbox"/> US Citizen <input type="checkbox"/> Non-US Citizen
Work/Service to be performed:	<input checked="" type="checkbox"/> Supplier <input checked="" type="checkbox"/> Manufacturer
Dollar Value of Work:\$	% of total bid amount %

The undersigned will enter into formal agreement with the DBEs listed above for work in this schedule conditioned upon the award of a contract by the Central Midlands Regional Transit Authority (CMRTA.) Failure to do so may constitute a breach of contract, with the CMRTA.

Bidders Signature: _____ Date: _____

Print Name: _____ Title: _____

DBEPROGRAM

Initial Here

DBE-16

Attachment G
SCDOT-UCP Agreement



February 24, 2005

Ms. Mitzi Javers
Central Midlands Regional Transit Authority
1409 Huger Street
Columbia, SC 29202

RE: Unified Certification Program Agreement

Dear Ms. Javers:

Please find enclosed, a copy of your signed and executed Unified Certification Program (UCP) Agreement for your record.

We at SCDOT are pleased to have worked with you and we certainly appreciate your cooperation. As you may be aware, we are in the process of implementing the UCP Program and will keep you updated as more information becomes available.

If you have any questions, please contact me at 803-737-1372 or nelsonrd@scdot.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Rogie D. Nelson".

Rogie D. Nelson
UCP Coordinator

RDN:alj
Enclosure
cc: Arlene Prince, Deputy Director
File: DBE/RDN

RECEIVED

MAR 01 2005

CMRTA



Post Office Box 191
Columbia, South Carolina 29202-0191

Phone: (803) 737-2314
TTY: (803) 737-3870

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

**Agreement Establishing
South Carolina Unified Certification Program
For the Disadvantaged Business Enterprise Program**

This AGREEMENT is made and entered into by and between the attached listed participants (hereinafter "Program Partners") and the South Carolina Department of Transportation (SCDOT), each a recipient as defined in 49 CFR Part 26.81 and in accordance with SCDOT approved Disadvantaged Business Enterprise (DBE) Program.

WHEREAS, 49 CFR Part 26.81 requires federal transportation fund recipients of a state to create a Unified Certification Program (UCP) as part of each recipient's DBE program; and

WHEREAS, the parties require certification, recertification, and decertification of firms as a DBE; and

WHEREAS, all recipients of federal transportation funds in this state are covered by the requirements of 49 CFR, and are also required to participate in a Unified Certification Program; and

WHEREAS, the parties desire to join together for cooperative action pursuant to carrying out the requirements of 49 CFR Part 26 and to establish a South Carolina Unified Certification Program (SCUCP); and

WHEREAS, by that Agreement all current recipients and/or future recipients identified by SCDOT are bound by the requirements of the SCUCP, which is a continuation of the SCDOT current and previous process. This Agreement applies to all direct and indirect recipients.

NOW, THEREFORE, in consideration of the mutual promises and benefits that each party shall derive therefrom, the parties agree as follows:

ARTICLE I

PURPOSES

The parties have entered into this Agreement for the purposes of creating a South Carolina Unified Certification Program (SCUCP) to be administered by the South Carolina Department of Transportation, Office of DBE & Special Programs.

SCDOT shall provide "one-stop shopping" to applicants for DBE certification, so that an applicant will apply only once for a DBE certification which is to be honored by all USDOT recipients in South Carolina. SCDOT will develop a uniform application letter and notice of certification. A uniform certification

application developed by the USDOT may be designated as the official application. The application may be modified as permitted by the USDOT to comply with streamlining adopted by SCDOT, the lead agency.

SCDOT will review all DBE applicants of Program Partners. This shall include firms that provide aviation, heavy highway and transit oriented services or products, including but not limited to, aviation specialty firms, heavy highway and bridge construction, products and services, planning and engineering consultants, specialty consultants, non-heavy construction, products and services, roadway suppliers, steel manufacturers or fabricators, food service firms, and structural construction firms.

If additional expertise is required, aviation specialty firms such as concessionaires may be collaboratively reviewed by SCDOT and an entity knowledgeable about airport issues.

ARTICLE II

SERVICES

Section 2.1 South Carolina Unified Certification Program

The SCUCP is hereby created and implemented in accordance with 49 CFR Part 26.81, as amended.

- a. SCDOT will follow all certification, recertification, and decertification procedures in accordance with the Certification Standards of 49 CFR Part 26, Subpart D, and the Certification Procedures of 49 CFR Part 26, Subpart E as applied by SCDOT in its DBE Program.

1. **Certification Location**

Applications are available from the South Carolina Department of Transportation (SCDOT), Office of DBE & Special Programs, 955 Park Street, Columbia, SC or the SCDOT website at <http://www.dot.state.sc.us>. The SCDOT Columbia office will serve as the centralized location for processing applications and updating any changes as they are made. The mailing address is as follows: SCDOT, Office of DBE & Special Programs, Post Office Box 191, Columbia, South Carolina 29202.

2. **Receipt of Application**

The certification process starts with SCDOT's receipt of a completed Certification Application. SCDOT will log the

application into the Certification Request database, assemble a file, and assign the file to a Certification Program Analyst (hereinafter "Analyst") for review. To be processed, an application must contain all requested documentation. If the requested documentation is not included, the Analyst will promptly notify the applicant that the omitted documents must be supplied. Applicants are urged to submit requested information to SCDOT as soon as possible. Faxed documents will be accepted. Where the applicant has failed to provide requested information within a reasonable period of time, as determined by the Analyst, the analyst will notify the applicant that consideration of the application will be discontinued unless the requested information is received within 15 calendar days. If the information is not received within 15 calendar days, the applicant may be notified that the review is ended and that the applicant must begin the application process again if certification is desired at a later date, and the applicant is prepared to submit the requested documentation.

3. Out-of-State Applicants

SCDOT shall review and make an eligibility determination on all firms applying for DBE certification whose business is located in the State of South Carolina. SCDOT shall accept applications from firms located across state lines; however, onsite reviews may be conducted by the applicant firm's home state. (See Section 5 – Onsite Review)

4. Processing of Applications

SCDOT will process completed applications within 90 days after all information is gathered. In exceptional circumstances, the SCDOT Executive Director, or designee, may grant an additional 60 days for processing. At any point during the review process, an applicant may submit a written request to withdraw its application. Upon receipt of such a request, the applicant's file will be closed.

5. Onsite Review

After the application and requested documentation have been received, the Analyst will schedule an onsite review with the firm. If a firm is located within a 50-mile radius of the South Carolina state line, SCDOT may conduct its own onsite review; otherwise, the Analyst will request that the firm's home state perform the onsite review. The onsite

review will be made as soon as possible after receipt of the application and requested documentation.

6. Currently Certified DBE Firms

Firms listed in each recipient's DBE directory on the implementation date of the SCUCP will automatically be included in the SCUCP DBE Directory. It will be presumed that the DBE firm: (1) was certified in accordance with requirements of 49 CFR Part 26 by the responsible Program Partner; (2) is in good standing with the certifying recipient; and (3) was not denied DBE certification by any other recipient within the past year. The certifying Program Partner is responsible for providing to SCDOT any information contrary to the above. SCDOT will conduct a Certification Review of these DBE firms within three years of the date of certification by the responsible Program Partner.

7. Approval Process

After the onsite review is completed and all requests for information are satisfied, the Analyst will prepare a summary of the application and make a recommendation to the Director of the Office of DBE & Special Programs (hereinafter "SCDOT Director/DBE Office"). The SCDOT Director/DBE Office will issue a decision to the applicant in the form of a Notice of Certification or Notice of Denial.

8. Issuance of Notice of SCUCP Certification

Upon approval, a Notice of Certification will be issued to the applicant and include a Certification Letter, date of certification and a listing of the applicable areas of work.

The firm will be certified for a period of at least three years. All Program Partners will be notified of all newly certified firms by e-mail.

9. Notice of SCUCP Denial

When a firm does not meet the DBE eligibility requirements at the time of application, the firm will be denied certification as a DBE by the SCDOT Director/DBE Office. The firm will be provided a written explanation of the reasons for denial as required by 49 CFR Part 26.86. All Program Partners will be notified of all denials by e-mail. The denial will be the decision of the SCDOT Director/DBE Office. If the applicant

review will be made as soon as possible after receipt of the application and requested documentation.

6. Currently Certified DBE Firms

Firms listed in each recipient's DBE directory on the implementation date of the SCUCP will automatically be included in the SCUCP DBE Directory. It will be presumed that the DBE firm: (1) was certified in accordance with requirements of 49 CFR Part 26 by the responsible Program Partner; (2) is in good standing with the certifying recipient; and (3) was not denied DBE certification by any other recipient within the past year. The certifying Program Partner is responsible for providing to SCDOT any information contrary to the above. SCDOT will conduct a Certification Review of these DBE firms within three years of the date of certification by the responsible Program Partner.

7. Approval Process

After the onsite review is completed and all requests for information are satisfied, the Analyst will prepare a summary of the application and make a recommendation to the Director of the Office of DBE & Special Programs (hereinafter "SCDOT Director/DBE Office"). The SCDOT Director/DBE Office will issue a decision to the applicant in the form of a Notice of Certification or Notice of Denial.

8. Issuance of Notice of SCUCP Certification

Upon approval, a Notice of Certification will be issued to the applicant and include a Certification Letter, date of certification and a listing of the applicable areas of work.

The firm will be certified for a period of at least three years. All Program Partners will be notified of all newly certified firms by e-mail.

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When a firm does not meet the DBE eligibility requirements at the time of application, the firm will be denied certification as a DBE by the SCDOT Director/DBE Office. The firm will be provided a written explanation of the reasons for denial as required by 49 CFR Part 26.86. All Program Partners will be notified of all denials by e-mail. The denial will be the decision of the SCDOT Director/DBE Office. If the applicant

does not choose to appeal the decision, they may re-apply after a period of twelve months from the date of the Letter of Denial.

Section 2.2 Right to Appeal

A firm may appeal the decision of the SCDOT Director/DBE Office. Appeals are to go to the South Carolina Administrative Law Judge Division (ALJD) pursuant to 25A S. C. Code Regs. 63-704(I) and must be sent within 15 days of receipt of the Letter of Denial; or a firm may choose to appeal directly in writing to the USDOT within 90 days of the date of final decision by the SCDOT Director/DBE Office.. Appeals to USDOT may be sent to the following address: Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington, DC 20590.

If the applicant does not appeal to the ALJD or the USDOT within the allotted time, the denial becomes administratively final. When a decision of the SCDOT Director/DBE Office to deny certification is upheld in the appeals process, the firm in question is not eligible to participate as a DBE on federally funded projects and may not reapply for DBE certification for at least one year from the date of the Letter of Denial by the SCDOT Director/DBE Office.

Section 2.3 Expansion Request for Additional Types of Work

In accordance with 49 CFR Part 26.71(n), SCDOT will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to demonstrate ownership and control of the firm. SCDOT may -- expand the list of work areas for a certified DBE after the firm has demonstrated its ability with respect to that type of work.

Section 2.4 Unified DBE Directory

SCDOT will maintain a unified DBE directory for all firms certified by SCDOT, to include the firm's name, address, telephone number, and the types of work the firm has been certified to perform as a DBE. SCDOT will make the Directory available as follows:

- a. An electronic version of the directory will be updated daily with additions, deletions, and other changes as they occur and in accordance with 49 CFR Part 26.81(g).
- b. The electronic version of the directory will be used as the official directory reference and available to the Program Partners and

the general public on the SCDOT website at:
<http://www.dot.state.sc.us>.

- c. An updated hardcopy version of the directory will be readily available at SCDOT, Office of DBE & Special Programs, 955 Park Street, Columbia, South Carolina.

Section 2.5 Implementation Date

The SCUCP will be fully operational and open to receive applications within 90 days of the approval of the SCUCP by the USDOT Secretary of Transportation. *(See Attachment: Implementation Plan)*

After the effective date of the SCUCP, all new firms must be certified by SCDOT based on guidelines prescribed in 49 CFR Part 26 and provisions under the SCUCP Agreement in order to be recognized as certified for USDOT-funding purposes. All DBE firms seeking recertification or certification renewal must also follow the process established by the SCUCP.

Section 2.6 Certification Standards

SCDOT shall cooperate fully with oversight, review, and monitoring activities of the USDOT and its operating administrations. SCDOT will follow the Certification Standards of 49 CFR Part 26, Subpart D and the Certification Procedures of 49 CFR Part 26, Subpart E in determining eligibility of firms to participate as a DBE in USDOT-assisted contracts.

Pursuant to 49 CFR Part 26.81(c), all certifications by SCDOT shall be certifications that have been made final before the due date for bids or offers on a contract on which an applicant firm seeks to participate as a DBE.

The SCUCP shall implement USDOT directives and guidelines concerning certification matters. All obligations of Program Partners with respect to certification and nondiscrimination will be carried out by SCUCP, and Program Partners may use only the SCUCP that complies with the certification and nondiscrimination requirements of 49 CFR Part 26.81.

Section 2.7 Authority to Make Certification Decisions

SCDOT will make all DBE certification decisions on behalf of all Program Partners in the State of South Carolina. DBE certification

decisions by SCDOT shall be binding on all parties to the Agreement.

Section 2.8 Interface With Other UCPs

SCDOT may enter into written reciprocity agreements with other UCPs. Such an agreement will outline the specific responsibilities of each participant. SCDOT may accept the certification of any other UCP or USDOT recipient, but is not required to do so.

Section 2.9 Program Partners Responsibility for Their Own DBE Program

SCDOT will not establish, recommend, or alter any Program Partner's overall DBE Program, other than to complement the Program Partner's approved program. DBE goal development, administration, monitoring, and reporting will remain the sole responsibility of the Program Partner.

Section 2.10 Media Contacts

All "media" contacts related to the SCUCP or its activities are to be made by SCDOT. SCDOT will not handle or be responsible for any inquiries or criticisms outside its role as the lead agency. Program Partners shall refer all media contacts regarding the SCUCP Agreement to SCDOT and all responses will be made by SCDOT.

Section 2.11 Resources and Expertise of the SCUCP

The Program Partners agree that SCDOT will provide the staff, physical space, web site space, office supplies and travel necessary to carry out the obligations of the SCUCP. The administrative cost for the SCUCP will be absorbed by SCDOT for the first year of operation. The SCUCP funding formula for succeeding years will be developed on the basis of, or in proportion to the applications processed by SCDOT or through a formula as negotiated between SCDOT and the individual Program Partners.

Section 2.12 Decertification

SCDOT will take action to decertify a DBE firm if it is determined that it does not meet the eligibility standards in accordance with the certification procedures of 49 CFR Part 26, Subpart E. Certification challenges and ineligibility complaints should be forwarded to SCDOT for inquiry and/or investigation.

decisions by SCDOT shall be binding on all parties to the Agreement.

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Section 2.13 Compliance and Enforcement

SCDOT will notify the appropriate Program Partner when an enforcement issue is identified. The individual Program Partner is then responsible to take the appropriate enforcement action in accordance with 49 CFR Part 26, Subpart F, Compliance and Enforcement.

ARTICLE III

TERM AND SCOPE OF AGREEMENT

Section 3.1 Term

This Agreement shall be effective immediately upon its execution by all the parties hereto and the approval of the SCUCP by the USDOT Secretary of Transportation. This Agreement and the SCUCP shall continue in force as long as required by federal laws and regulations, unless terminated pursuant to Section 3.2 of this Agreement.

Section 3.2 Termination

Any party to this Agreement may terminate its relationship to the SCUCP by official notification including a showing of non-recipient status to the SCDOT. SCDOT will notify the USDOT of this request for termination.

Section 3.3 Limited Agreement

This Agreement is limited in scope and nothing contained in this Agreement shall imply any relationship between any of the signing parties beyond the creation and implementation of the SCUCP.

Section 3.4 Amendment of the SCUCP Agreement

SCDOT, as the lead agency, may make minor revisions to this document to facilitate processing of certifications without formal approval of Program Partners.

**SCUCP Agreement
Signature Page**

IN WITNESS WHEREOF, the parties have executed this SCUCP Agreement
on the dates indicated below.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: Arlene Prince
Title: Deputy Director
Date: 8-31-04

PROGRAM PARTNER

By: M.E. Javers
Agency: Central Midlands Regional Transit Authority
Title: Executive Director
Date: 8/25/04

RECEIVED

AUG 25 2004
OFFICE OF COMPLIANCE
S.C. DEPARTMENT
OF TRANSPORTATION

Attachment H
DBE Regulations, 49 CFR Part 26

Disadvantaged Business Enterprise ("DBE")
49 CFR Part 26

The DBE regulations may be accessed for DBE participation at the following location:

www.ecfr.gpoaccess.gov

Title 49, Part 26

